



U.S. Department
of Transportation
**Federal Aviation
Administration**

Advisory Circular

**Subject: WHISTLEBLOWER PROTECTION
PROGRAM (AIR CARRIER)**

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Initiated By: AFS-200W

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Change:

1. What is the purpose of this advisory circular (AC)?

This AC provides guidance for air carrier employees, air carrier contractor employees, and air carrier subcontractor employees, concerning the joint Federal Aviation Administration (FAA)/Occupational Safety and Health Administration (OSHA) Whistleblower Protection Program.

2. What information does this AC contain?

This AC contains information about the program, who is covered by the program, how to file a whistleblower complaint, the rights and privileges of covered employees, and the responsibilities of the FAA and OSHA.

3. Who is covered by the Whistleblower Protection Program?

All employees of a U.S. air carrier, a company that performs under contract to a U.S. air carrier, and a subcontractor of a U.S. air carrier are covered by the program.

4. What does this Whistleblower law do for me (a protected employee)?

If you are an employee of a U.S. air carrier, its contractor, or its subcontractor, this law protects you against discrimination by your employer for reporting air safety information. An employer cannot discriminate against you because you provided, caused to be provided, or are about to provide to the employer or Federal Government information that relates to any violation or alleged violation of any order, regulation, or standard of the FAA or any other provision of Federal law that relates to air carrier safety. Also, an employer cannot discriminate against you because you filed, caused to be filed, or are about to file a proceeding that relates to any violation or alleged violation of any order, regulation, or standard of the FAA or any other provision of Federal law that relates to air carrier safety.

5. What are the criteria for protection?

To qualify for protection under the Whistleblower Protection Program, you must fulfill two criteria. First, the information you report must be about a violation or alleged violation related to air carrier safety. Second, your employer must have discriminated against you for reporting the safety information.

6. What is safety information?

For the purposes of this AC, air carrier safety is any safety concern that you believe, in good faith, is a violation of an FAA regulation, order, or standard or any other Federal law that implicates the safety and security of air carriers. The safety information you report must be **related to air carrier safety** (not personal safety). The following are examples of information related to air carrier safety:

- Falsification of records
- Noncompliance with flight and rest requirements
- Improper maintenance practices
- Security breaches
- Inadequate compliance with training requirements
- Use of suspected unapproved aircraft parts
- Improper manufacturing procedures
- Crewmember medical qualifications
- Improper production of aircraft parts
- Instruction not to document aircraft maintenance discrepancies

7. What is discrimination?

There are many ways an employer may discriminate against you, and it is impossible to list them all here. The following are examples:

- Harassment
- Intimidation
- Threats
- Reprimands
- Letters of warning
- Cut in pay
- Suspensions
- Demotion
- Work schedule change
- Discharge from employment

8. What are my rights?

A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of this law may file (or have any person file on his or her behalf) a

complaint with the Secretary of Labor. **Complaints must be filed in writing within 90 days after the date on which the alleged discrimination occurred.**

9. Where is this law codified in the United States Code?

The air carrier whistleblower protection provisions are codified in Title 49 of the United States Code (49 U.S.C.) § 42121.

10. When was this protection signed into law?

April 5, 2000. Any discrimination within the meaning of the statute is prohibited after April 5, 2000.

11. Who has responsibility for enforcing the law?

The FAA and Secretary of Labor, through the OSHA, have responsibilities related to 49 U.S.C. § 42121. The Secretary of Labor delegated the authority to enforce the provisions of the Whistleblower Protection Program to the Assistant Secretary for OSHA. OSHA has the responsibility to investigate employee complaints of discrimination. OSHA may order a violator to take affirmative action to abate the violation, reinstate the complainant to his or her former position with back pay, and award compensatory damages, including attorney fees. FAA has the responsibility to investigate complaints related to air carrier safety and has authority under the FAA's statute to enforce air safety regulations and issue sanctions for noncompliance with these regulations. FAA enforcement action may include certificate suspension or revocation and the imposition of civil penalties. Additionally, FAA may issue civil penalties to U.S. air carriers, contractors, or subcontractors for discriminating in violation of the Whistleblower Protection Program.

12. What if I think my information is related to air carrier safety, but I don't know the FAA regulation, order, or standard?

You do not have to know which regulation, order, or standard was violated or have evidence that an FAA regulation, order, or standard has actually been violated. You only need, in good faith, to believe that the activity you reported was contrary to an FAA regulation, standard, or order or any other provision of Federal law that relates to air carrier safety.

13. What should I do if I suspect air carrier safety is being compromised?

You should immediately report this information to your employer and/or the nearest FAA Flight Standards District Office (FSDO). See appendix 1 of this AC for a list of FAA regional offices or visit the FAA Whistleblower Protection Program Web site (<http://www.faa.gov/avr/afs/whistleblower/>) for the office closest to you.

14. What if my company doesn't do anything about my safety complaint, how do I "BLOW THE WHISTLE"?

Initial safety complaints (blowing the whistle) can be reported directly to your nearest FSDO, FAA regional office, or the **FAA Safety Hotline** at 800-255-1111 (press 1 for main menu and then press 1). Air carrier security complaints should be reported directly to the Transportation Security Administration (TSA) or the TSA Hotline at 866-289-9673.

15. Filing a Whistleblower complaint.**a. I believe my employer has discriminated against me for reporting safety information. Where do I file a complaint?**

(1) Within 90 days, you should contact a Federal OSHA office to file the discrimination complaint. You can file your discrimination complaint with the OSHA office responsible for enforcement activities in the geographic area where the alleged discrimination occurred. If that is not possible, you can contact the nearest regional OSHA office listed in appendix 1 or visit the FAA Whistleblower Protection Program Web site for the office closest to you.

(2) You may also notify the FAA within 90 days if you are more comfortable talking to us about the air carrier safety concerns. The FAA will forward your complaint to OSHA on your behalf. See appendix 1 for a list of FAA regional offices or visit the FAA Whistleblower Protection Program Web site for the office closest to you.

b. Do I need to request protection before I report a safety violation?

No. If you are a protected employee and engage in a protected activity, then you are already protected under the law.

c. What should I do if my discharge or discrimination happened more than 90 days ago?

It is very important to file the complaint within 90 days after the discriminatory action that you allege. You may still file your complaint with an OSHA office, but the OSHA Area Director may dismiss your complaint as untimely. FAA may still investigate the safety information you provide.

d. Do I have to file the discrimination complaint with OSHA myself?

No. A representative, such as a spouse, parent, union representative, or legal counsel, can file a discrimination complaint with OSHA on your behalf.

e. What should I include in my complaint?

You should include the following items in your complaint:

- Your name, address, and telephone number and the best time to reach you
- Your employer's name, address, and general telephone number where the alleged violation(s) and discrimination occurred
- The name of the company official(s) involved in the discriminatory action taken against you
- A description of the air safety violation(s) that you reported and the location and date of the safety violations
- The name of the FAA office you contacted and/or the company supervisor, manager, or other employer representative you informed about the air safety violation(s)
- The date that you informed the FAA office and/or the company supervisor, manager, or other employer representative of the air safety violation(s)
- The discriminatory action(s) taken against you
- The date(s) of any discriminatory action(s) taken against you
- Why you believe the company took the action(s) against you

f. Can I file anonymously?

No. While you can always anonymously inform the FAA of a safety concern through the FAA's safety hotline, you must give the FAA and OSHA your name in order to receive the protections of the Whistleblower Protection Program.

g. Can my identity be kept confidential?

Your identity will be kept confidential to a point, but certain safety information that is considered emergency in nature or time critical may require the immediate disclosure of your identity by the FAA in the interest of aviation safety. Additionally, OSHA will identify you in the complaint once it is filed against the company.

h. Is there a frivolous complaint provision?

Yes. If the Secretary of Labor finds that a complaint is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer reasonable attorney fees not exceeding \$1,000 (49 U.S.C. § 42121(b)(3)(c)).

16. What to expect after you file a complaint.**a. I've filed a complaint with OSHA and with FAA. What happens now?**

(1) When OSHA receives your discrimination complaint, OSHA reviews the complaint to ensure that:

- It falls within the statutory protections of 49 U.S.C. § 42121
- It is not a frivolous complaint
- It adequately describes and supports a possible violation of the Whistleblower statute, as required under 49 U.S.C. § 42121(b)(2)(B)(i)
- It was filed within 90 days of the alleged discriminatory event

(2) Providing complete information during the initial filing allows the OSHA investigator to process the complaint more quickly.

(3) OSHA will then notify the employer named in the complaint and the FAA Administrator, in writing, of the filing of the complaint. The information that OSHA must provide to the employer named in the complaint and the FAA Administrator includes the allegations and the substance of the evidence that supports the complaint.

b. Will the FAA conduct an investigation?

Yes. The FAA will conduct an investigation of the alleged safety violations, provided that an investigation was not previously conducted regarding the same subject. Upon receipt of the complaint by the FAA, the FAA may conduct the investigation into the allegations related to air carrier safety or forward your complaint if another Federal organization has jurisdiction, such as the TSA for air carrier security complaints.

c. Will I be notified of the results of the FAA investigation?

Yes. All complainants receive a letter notifying them of the general result of the FAA's investigation of their allegations. The FAA's disposition of your safety allegations is independent of OSHA's investigation of the alleged discrimination against you.

d. What happens to my OSHA case if FAA's investigation does not establish that a violation occurred?

The FAA's investigation is independent of OSHA's investigation. The law states that you are protected if you reported a violation or an **alleged violation** related to air carrier safety. Your allegations do not have to be substantiated by the FAA or any other agency for OSHA to find that your case has merit.

e. Will OSHA investigate the alleged discrimination?

OSHA will give your employer a chance to respond to the allegations. If your employer proves to OSHA, by clear and convincing evidence, that it would have taken the same personnel action for some other, legitimate reason, then OSHA will not conduct an investigation of your discrimination complaint and your complaint will be dismissed.

f. What if I don't agree with the employer's response to OSHA and still want OSHA to investigate?

(1) If you object to the OSHA Area Director's preliminary order that denies the complaint, you have 30 days to file an appeal and request a hearing. If you fail to request the hearing within the 30-day period, the preliminary order that denies the complaint will become a final order and is no longer subject to review.

(2) As the complainant, you will be notified by letter of the OSHA Area Director's finding and preliminary order and about your rights to request a hearing within 30 days.

g. What happens if OSHA does not consider the evidence provided by the employer to be clear and convincing?

If OSHA finds that you have sufficiently identified a possible violation of the statute and does not find clear and convincing evidence that the employer would have taken the personnel action regardless of your whistleblowing, OSHA will conduct a full investigation to determine if the complaint has merit no later than 60 days after receiving the complaint.

h. What if both parties agree to settle the matter during OSHA's investigation?

At any time before OSHA issues a final order, the proceeding will terminate if a settlement agreement is reached between the Secretary of Labor, the complainant, and the employer alleged to have committed the discrimination. This means that a settlement agreement, if all parties agree, can be executed at any time during the process.

17. This sounds expensive, how am I supposed to pay for exercising my rights?

The law allows for reasonable compensation to you if a violation of the statute has occurred. Under 49 U.S.C. § 42121(b)(3)(B), the Secretary of Labor will award reasonable costs of litigation, at your request, including reasonable attorney and expert witness fees.

18. Does OSHA have a Hotline?

Yes. The OSHA Hotline number is 800-321-OSHA (6742).

19. Does the FAA have a Hotline?

Yes. The FAA's Whistleblower Protection Program Hotline number is 800-255-1111 (press 1 for main menu and then press 5).

This Hotline is for employees of air carriers, air carrier contractors, and air carrier subcontractors who would like information about the Whistleblower Protection Program or how to file a whistleblower complaint after they have been involved in a protected activity and subsequently believe they have been discriminated against. **It is not the place to initially blow the whistle.** Regular business hours are Monday-Friday, 8am until 4pm (Eastern Time), except Federal holidays. After business hours, callers may leave a voice message.

20. Where can I get more information?

The following documents and Web sites contain more detailed information and can be found on the FAA Whistleblower Protection Program Homepage (www.faa.gov/avr/afs/whistleblower):

- 49 U.S.C. § 42121, Protection of Employees Providing Air Safety Information
- FAA/OSHA Memorandum of Understanding, dated March 22, 2002
- Order 8400.10, Air Transportation Operations Inspector's Handbook, volume 1, chapter 6, Whistleblower Protection Program
- Order 8300.10, Airworthiness Inspector's Handbook, volume 1, chapter 11, Whistleblower Protection Program
- FAA-WBPP-01, Whistleblower Protection Program Outreach Poster
- FAA-WBPP-02, Whistleblower Protection Program Pocket Pamphlet
- FAA-WBPP-03, Whistleblower Protection Program Hotline Wallet Card
- 29 CFR part 1979, Procedures for the Handling of Discrimination Complaints under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century
- The OSHA Web site, www.osha.gov

21. Where can I address questions?

Questions can be phoned in to Manager, FAA Whistleblower Protection Program, AFS-200W, at (202) 267-7074; or mailed to:

Federal Aviation Administration
AFS-200W, Room 831
800 Independence Ave., SW.
Washington, DC 20591



for James J. Ballough
Director, Flight Standards Service

APPENDIX 1. FAA AND OSHA CONTACTS**a. FAA Regional Offices.**

- (1) Anchorage: 807-271-5514
- (2) Atlanta: 404-305-6000
- (3) Boston: 781-238-7200
- (4) Chicago: 847-294-7252
- (5) Fort Worth: 817-222-5200
- (6) Kansas City: 816-329-3200
- (7) Los Angeles: 310-725-7200
- (8) New York: 718-553-3200
- (9) Seattle: 425-227-2200

b. OSHA Regional Offices.

- (1) Atlanta: 404-562-2300
- (2) Boston: 617-565-9860
- (3) Chicago: 312-353-2220
- (4) Dallas: 214-767-4731
- (5) Denver: 303-844-1600
- (6) Kansas City: 816-426-5861
- (7) New York: 212-337-2378
- (8) Philadelphia: 215-861-4900
- (9) San Francisco: 415-975-4310
- (10) Seattle: 206-553-5930